

Town of Lincoln

Zoning Board of Review

100 Old River Road, Lincoln, RI

Minutes of November 4, 2014 Meeting

Present: David DeAngelis-Chair, John Bart, Mark Enander, Lori Lyle, Stephen Kearns, Robert Oster, John Barr, Town Solicitor

Minutes

Motion made by Member Oster to accept the September 2014 Minutes as presented. Motion seconded by Member Bart. Motion carried by all present.

Applications:

Patti Hien, 65 Grandview Avenue, Lincoln, RI – Reconsideration for findings of fact of application for Dimensional Variance approved on February 6, 2007. Applicant sought lot width variance for the purpose of subdividing property located at 65 Grandview Avenue.

AP 8 Lot 23 Zoned: RS 12

This application was continued from the October 7, 2014 meeting for a notice issue. This is not a usual application. This issue was remanded from Superior Court on an appeal. The court is looking for findings of fact to support the decision of approval for the dimensional variance that was made. Those facts should be derived

from the paperwork that was supplied in your packets. There should be no testimony on this application.

Correspondence was received from Superior Court indicating a Decision was rendered remanding the application back to the Zoning Board for reconsideration for findings of fact. The Board must now decide on what procedure to utilize to go forward to render a new finding of fact. There are no members on the current Board who were sitting on the original application and they have two choices:

- Decide to move forward and render a decision based on the transcript
- The Board cannot render a decision based on the transcript and hear a new application.

Member Oster stated he may have a conflict of interest regarding this application. He knows and represents some of the abutters regarding this application but he felt he could separate professional interest from his Board duties and can be fair to both sides and render a vote.

Attorney DeSisto stated under the Code of Ethics Member Oster has no economic state in this application and he can go forward.

Based on the current information before this Board a vote was taken for a new application to come before this Board. Vote taken and passed 5-0 by with Members Barr, Kearns, Enander, Bart and Chairman voting that a new application needs to come before the Board.

Luke & Roberta Gosselin, 6 Middlebrook Lane, Lincoln, RI – Application for Special Use Permit to add an accessory family dwelling unit in the basement of home located at 6 Middlebrook Lane, Lincoln, RI.

AP 44, Lot 130 Zoned: R 40

This application represents a request for a Special Use Permit for an accessory family dwelling unit. The applicant proposes to add an in-law apartment to the basement of an existing home. The apartment is proposed to be used by the applicants' mother. No external additions are proposed. Section 260-9L allows this use with a SUP with the conditions that an annual affidavit be supplied to the Town verifying that this is not a rented space and used by a family member. The SUP is valid for five years.

Chairman read into the record standards that need to be met for a Special Use Permit.

House had two bedrooms in basement when purchased. Applicant renovated the house and the bedrooms were removed. They now want to add one bedroom and kitchen back into the basement for

wife's mother to move in. Mother drives and there is adequate room on the property for her car. Chairman informed applicant that a family member needs to occupy the home and they need to file an annual affidavit with the Town and return in 5 years to renew their application.

Chairman read into the record Planning Board/Technical Review Committee recommendation:

Members of the Technical Review Committee reviewed the submitted application for a Special Use Permit to construct in the basement of the existing house. The Technical Review Committee recommends approval of the request for a Special Use Permit. The applicant proposed to integrate the accessory family dwelling unit within the lower level of the proposed house. The Planning Board feels that the Special Use Permit will not alter the general character of the surrounding area and will not impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.

No opposition present.

Motion made by Chairman to approve the application stating:

- That the Special Use is specifically authorized under this Ordinance
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use
- That the granting of the Special Use will not alter the general character of the surrounding area

- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan

Motion seconded by Member Bart. Motion carried by all present.

Munir Rihani & Jill Theroux, 187 Belvedere Drive, Cranston, RI – Application for Dimensional Variance seeking rear setback relief for the construction of a deck onto a new home located at 1 Bittersweet Lane, Lincoln, RI.

AP 43. Lot 21 Zoned: RS 20

Represented by: John Shekarchi, Esq., 132 Old River Road, Lincoln, RI

This application represents a request for a Dimensional Variance for a deck. The applicant proposes to construct a deck to the rear of a new house under construction. The applicant proposes that the deck be 35.2' from the rear property line in which 37.5' is required. Therefore the applicant would need 2.3' of rear setback relief for the proposed deck. The proposed plan meets the lot coverage however the coverage would be approximately 19.3% in which 20% is the maximum. Therefore the applicant only has .7% area for accessory features including sheds and pools.

Chairman read into the record standards that need to be met for a Dimensional Variance.

Request is regarding new construction on a corner lot. Applicant wants to add a deck to the rear of the property.

Witness

Edward Pimentel, AICP

The deck would be four feet wide and there are no inconsistencies with the Comprehensive Plan. Square footage of the house is 3,589 with the deck. The average home in the cul de sac ranges from 2,506 square feet to 3,799 square feet. What applicant is proposing would fit in the neighborhood.

Member Oster stated the plans show an easement at the rear of the property. Attorney Shekarchi informed him the easement runs between two abutting lots. The drainage easement is not part of the parcel in question.

Attorney Shekarchi submitted into the record as Exhibit #1 correspondence from abutters Richard Bucki, Joseph Arango and Vernon Howard stating they have no objection to what applicant is proposing. Chairman asked if the hardship was more than a mere inconvenience to applicant. Ed Pimentel responded that there is a need to provide stairs and a landing giving up a certain width of the deck. Member Kearns asked when the original plans were approved did it have a deck? Mr. Pimentel replied yes. Russell Hervieux, Zoning Official informed Member Kearns that the original plans did not have a deck but showed a patio.

Chairman read into the record Planning Board/Technical Review Committee recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted application for a Dimensional Variance for a rear yard setback for the construction of a deck onto a new home located at 1 Bittersweet Lane, Lincoln, RI. The Technical Review Committee recommends denial of the application. The TRC feels that the application does not meet any of the standards for a Dimensional Variance or height relief as presented in the zoning Ordinance. The applicant is currently under construction and the TRC feels that the applicant should have designed a home that would have fit within the established zoning setbacks. The Technical Review Committee feels that the current site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land.

No opposition present.

Motion made by Chairman to approved the application seeking 2.3 feet rear setback relief stating:

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant – property is a corner lot.**

- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan. There are other homes in the area with decks.
- The relief requested is the least relief necessary.
- The hardship amounts to more than a mere inconvenience. It is impossible for the applicant to construct a smaller lot.

Motion seconded by Member Barr and carried by all present.

Mujeeb Ahmed, 11 West Butterfly Way, Lincoln, RI - Application for Dimensional Variance seeking front setback and height relief for the construction of a new home to be located on Presidential Way, Lincoln, RI.

AP 26, Lot 288 Zoned: RA 40

Represented by: John Shekarchi, Esq., 132 Old River Road, Lincoln, RI

Chairman read into the record standards that need to be met for a Dimensional Variance.

This application represents a request for a Dimensional Variance to construct a new home. The applicant proposes to build a new home

closer to the street and taller than 35'. The closest point on the southwest front corner is 22.0' from the front setback which 40' is required. Therefore the applicant would need 18.0' of front relief on the southwest front closest corner. The closest point on the northwest front corner is 25.61' from the front setback which 40' is required. Therefore the applicant would need 14.39' of front relief on the northwest front closest corner. The building height cannot be accurately calculated with the information supplied. The height is calculated by taking the average of the four sides of the building per section 260-21. The applicant only supplied the dimension from one side which is 44'. If relief is granted using this number then the house could actually be built taller than shown. The method of the calculation was explained to the applicant and their attorney on more than one occasion. The plan meets the lot coverage requirement.

Property is currently under contract to build a new house for applicant's daughter. Applicant needs 9 feet of height relief. Grading on the lot is drastic and he also needs relief on the southwest and northwest corner of the property.

Witness

Ed Pimentel, AICP

Submitted into the record an updated report as Exhibit #1 and an analysis sheet as Exhibit #2. There is a need to push the house close to the cul de sac to meet DEM restrictions. If the application is denied the house will not be in conformance with other homes in the area.

Relief sought is reasonable and the lot has a great deal of issues. Most regulations must have contiguous uplands and the neighborhood is 90% built out.

Attorney DeSisto stated the question is does what is being proposed fit into zoning criteria and the height requirement of 44 feet. Mr. Pimentel responded that the rendition at certain points would need 9feet height relief from the bottom to the top of the house. Russell Hervieux, Zoning Official stated that he was concerned about 9 feet of relief – what about landscaping at the site? Would it change the 9 feet of relief sought?

Member Oster stated he would like to see the application continued to the December agenda because of possible height amendments to the application – applicant not sure if 9 feet is enough relief. He also does not like getting updated reports the night of the hearing because it does not afford enough time to review its changes. The TRC is also against the application as it is presented.

Chairman stated pages 3 and 5 of Mr. Pimentel's report had changes that included additional language which he did not have time to properly review. Russell Hervieux, Zoning Official also stated he would not accept what is on the current plan for the issuance of a Certificate of Occupancy. The plan does not show the height on other views of the house and needs plans to show height on all four sides of the house. Height is not calculated correctly on the plans.

Chairman made a recommendation to continue the application to the December agenda affording applicant time to clear such issues such as the accurate height of the house and height relief requested. Applicant agreed to the continuance.

Motion made by Chairman to continue the application to the December agenda. Motion seconded by member Oster. Motion carried by all present.

Motion made by Member Oster to adjourn the meeting. Motion seconded by Member Barr. Motion carried by all present.

**Respectfully submitted,
Ghislaine D. Therien
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Recording Secretary**